

Louis Price Paper Company, Inc. and Louis Price Paper Company, Inc., Debtor-in-Possession and Paper Products and Miscellaneous Drivers, Warehousemen, Helpers and Messengers, Local 27, International Brotherhood of Teamsters, AFL-CIO. Case 29-CA-18977

February 12, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed by Paper Products and Miscellaneous Drivers, Warehousemen, Helpers and Messengers, Local 27, International Brotherhood of Teamsters, AFL-CIO (the Union), on March 13, 1995, the General Counsel of the National Labor Relations Board issued a complaint on April 26, 1995, against Louis Price Paper Company, Inc. and Louis Price Paper Company, Inc., Debtor-in-Possession (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On August 8, 1995, the General Counsel filed a Motion for Summary Judgment. On August 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 21, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted to be true if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations of the Motion for Summary Judgment disclose that, by letter dated June 2, 1995, the Regional Office advised the Respondent that, if the Respondent did not file an answer by June 9, 1995, a Motion for Summary Judgment would be filed. No answer was filed by the extended due date of June 9, 1995.

The Respondent's August 21, 1995 response admits certain allegations of the complaint and raises affirmative defenses. The Respondent's response does not explain its failure to file a timely answer or request an extension of time to file an answer. Accordingly, in the absence of good cause being shown for the failure to

file a timely answer, we find that the General Counsel's Motion for Summary Judgment should be granted. Moreover, for the reasons stated below, we find that, even if we treated the Respondent's response as a timely filed answer, the matters alleged therein raise no issues warranting a hearing and do not constitute legally sustainable defenses.

The Respondent admits the substance of the complaint allegations, namely, that since September 30, 1994, it has failed to make weekly contributions due to Local 27's welfare trust fund and Local 27's pension trust fund. The Respondent also admits that at the times alleged in the complaint it was obligated to make the pension and welfare trust contributions.

The Respondent contends that on about April 18, 1995, Louis Price Paper Company, Inc. filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code and that it has been operating since that time as a debtor-in-possession pursuant to the applicable provisions of the Bankruptcy Code. The Respondent argues that the legal obligation of Louis Price Paper Company, Inc. to make the contractually required fund contributions ended on April 18, 1995, with the filing of the Chapter 11 bankruptcy petition, and that thereafter any liability for further contributions became the sole obligation of Louis Price Paper Company, Inc., Debtor-in-Possession. The Respondent contends that claims for payment of any allegedly delinquent fund contributions must be filed as claims in the bankruptcy proceeding. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within the 11 U.S.C. § 362(b)(4) and (5) exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985).¹

The Respondent also contends that, under Section 10(b) of the Act, any liability of the Respondent for the unfair labor practices alleged herein must be limited to the 6-month limitation period set forth in Section 10(b), and therefore cannot cover the 7 months (October 1994 through April 1995) alleged in the complaint. Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board" The charge was filed on March 13, 1995. The violations alleged in the

¹ We also reject the Respondent's contention that the liability for fund contributions is to be apportioned between Louis Price Paper Company, Inc. and Louis Price Paper Company, Inc., Debtor-in-Possession. As the Board stated in *Ohio Container Service*, 277 NLRB 305 (1985), the Supreme Court in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984), found that a debtor-in-possession is not a wholly "new entity," but rather constitutes the same "entity" that existed before the filing of the bankruptcy petition.

complaint are alleged to have commenced on or about September 30, 1994. Therefore, the complaint is clearly based on a charge timely filed within the 6-month limitation period as required by Section 10(b), and we find no merit to the Respondent's contention that the alleged violations are time-barred by the statute.

Accordingly, for all of these reasons, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with an office and principal place of business located at 34-40 11th Street, Long Island City, New York, has been engaged in the wholesale distribution of paper and related products. During the 12 months preceding the issuance of the complaint, the Respondent, in the course of its business operations, has purchased and received at its Long Island City, New York facility products, goods, and materials valued in excess of \$50,000 directly from sources located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

All trailers, jockeys, shipping clerks, chauffeurs, helpers, warehousemen, push-boys, hand truck operators, motorized lift employees, and motorcycle drivers and all other employees who normally perform work of a similar nature, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit described above, and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period from October 1, 1988, through September 30, 1991, and which has automatically renewed each year thereafter, until September 30, 1994. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

B. *The Violations*

Article 30 of the collective-bargaining agreement described above requires the Respondent to make weekly contributions to Local 27's welfare trust fund, and to Local 27's pension trust fund on behalf of the employees in the unit. Since on or about September 30, 1994, the Respondent has failed and refused to make any contributions for the calendar months of September, October, November, and December 1994, and January, February, March, and April 1995, to the welfare and pension trust funds.

The Respondent engaged in this conduct unilaterally, without the Union's consent, and in breach of the terms of the collective-bargaining agreement. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the welfare and pension trust funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due to the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

Pursuant to the General Counsel's request, we shall provide for mail notices to employees.

ORDER

The National Labor Relations Board orders that the Respondent, Louis Price Paper Company, Inc. and Louis Price Paper Company, Inc., Debtor-in-Possession, Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Paper Products and Miscellaneous Drivers, Warehousemen, Helpers and Messengers, Local 27, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to make the required contributions to Local 27's welfare and pension trust funds. The unit is:

All trailers, jockeys, shipping clerks, chauffeurs, helpers, warehousemen, push-boys, hand truck operators, motorized lift employees, and motorcycle drivers and all other employees who normally perform work of a similar nature, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by remitting the delinquent contributions to the welfare and pension trust funds, including any additional amounts due to the funds, and reimburse the unit employees for any expenses ensuing from the Respondent's failure to make the required payments, in the manner set forth in the remedy section of the decision.

(b) On request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Long Island City, New York, and mail to the Union and all unit employees, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Re-

gional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Additionally, signed copies shall be mailed by the Respondent immediately upon receipt to the Union and all the unit employees.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to make contributions on behalf of our unit employees to the contractual welfare and pension trust funds.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Paper Products and Miscellaneous Drivers, Warehousemen, Helpers and Messengers, Local 27, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of our employees In the following appropriate bargaining unit:

All trailer, jockeys, shipping clerks, chauffeurs, helpers warehousemen, push-boys, hand truck operators motorized lift employees, and motorcycle drivers and all other employees who normally perform work of a similar nature, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL make unit employees whole by remitting the delinquent contributions to the welfare and pension trust funds and by reimbursing unit employees for any expenses ensuing from our failure to make such contributions, with interest.

LOUIS PRICE PAPER COMPANY, INC.
AND LOUIS PRICE PAPER COMPANY,
INC., DEBTOR-IN-POSSESSION

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."